

**State of California
Department of Insurance**

INITIAL STATEMENT OF REASONS

**AMENDMENT TO THE CALIFORNIA CODE OF REGULATIONS
TITLE 10, CHAPTER 5, SUBCHAPTER 3, ARTICLE 9.5**

WORKERS' COMPENSATION DEPOSIT REQUIREMENTS REGULATION

DATE: August 18, 2005

REGULATION FILE: RH 05046584

INTRODUCTION

Pursuant to Insurance Code §11691, the Insurance Commissioner proposes to adopt the Workers' Compensation Deposit Requirements Regulation, which will clarify California Insurance Code §11691(f)(2). The proposed regulation will implement, interpret and make specific the provisions of Insurance Code §11691(f)(2).

SPECIFIC PURPOSE AND REASONABLE NECESSITY

California Insurance Code §§11691 et seq. require admitted insurers to make statutory deposits and also set forth a reinsurer's obligation, when reinsuring such business, to identify in a form prescribed by the Commissioner, amounts deposited for credit in the name of each ceding insurer. The proposed regulation specifies and clarifies a reinsurer's obligation, and the satisfaction of that obligation, in the event that the Commissioner draws upon the workers' compensation deposit made by the reinsurer under the reinsurance agreement.

Certain amendments to Insurance Code §§11690 et seq., which took effect on January 1, 2003, set forth reporting and other requirements regarding reinsurance agreements that cover workers' compensation business. This reporting requirement gives the California Department of Insurance ("Department"), for the first time, in the event of the insolvency of a workers' compensation insurer, the ability to access not only the workers' compensation deposit made by the insolvent insurer, but also the deposit made by a reinsurer to cover that portion of the insurers' obligation that it assumed under the reinsurance contract.

Based on the changes in §§11690 et seq. and in the Department's ability to identify and call upon the reinsurer's workers' compensation deposit, certain reinsurers and their association claim to be concerned about a future possibility that they may be subject to two demands on the same funds, if the California Insurance Commissioner calls on an insolvent non-domestic workers' compensation insurers' reinsurer deposit to pay a reinsured California workers' compensation policy claim, while at the same time, the home state receiver orders the reinsurer to pay all of the reinsurance to the insolvent

insurer's estate, with no deduction for the California claim payment. This has never happened before and probably never will, because payment of the California claim from the deposit would reduce the reinsurers' overall obligation to the estate by that amount. However, to address this possibility, the proposed regulation was drafted to clarify that the deposit obligation and the use of deposited assets remains unchanged, notwithstanding the reinsurance arrangement, and that any use of the reinsurance deposit proceeds to pay specific California workers' compensation claims will result in the satisfaction and release of those claim obligations. To the degree that it helps to achieve this goal, the proposed regulation is reasonably necessary.

ECONOMIC IMPACT ON SMALL BUSINESS

The Commissioner has identified no reasonable alternatives to the presently proposed regulation, nor have any such alternatives otherwise been identified and brought to the attention of the Department, that would lessen any impact on small business. Indeed, the proposed regulation is not anticipated to affect small business. Although performance standards were considered as an alternative, they were rejected, in part, because the kind of risks from which the regulation seeks to protect consumers cannot practicably be gauged by means of a performance standard.

IDENTIFICATION OF STUDIES

There are no specific studies relied upon in the adoption of the proposed regulation.

SPECIFIC TECHNOLOGIES OR EQUIPMENT

Adoption of this regulation would not mandate the use of specific technologies or equipment.

ALTERNATIVES

The Commissioner has determined that no reasonable alternative exists to carry out the purpose for which the regulation is proposed.

PRE-NOTICE WORKSHOP FOR DISCUSSIONS

The Commissioner did not conduct pre-notice public discussions pursuant to Government Code §11346.45, because this regulation does not entail complex or numerous proposals that cannot easily be reviewed during the public comment period and the interested parties – the reinsurers and their association - possess the necessary resources for review.

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